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ECOLOGY
State of Washington

Voluntary Cleanup Program (VCP): Guidance for the Expedited VCP Process

Toxics Cleanup Program

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For more information contact:

Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-7170

Washington State Department of Ecology — www.ecology.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

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Toxics Cleanup Program
Washington State Department of Ecology
Olympia, Washington
July 2020

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Acronyms and Abbreviations

Acronym or Abbreviation	Definition
CAP	Cleanup Action Plan
CPM	Cleanup Project Manager
Customer	Customer in the Voluntary Cleanup Program-Expedited process
Ecology	Washington State Department of Ecology
EIM	Environmental Information Management
FS	Feasibility Study
HOTAP	Heating Oil Technical Assistance Program
HSL	Hazardous Sites List
MTCA	Model Toxics Control Act
NFA	No Further Action
PLIA	Washington State Pollution Liability Insurance Agency
PTAP	Petroleum Technical Assistance Program
RAG	Remedial Action Grant
RCW	Revised Code of Washington (statute)
RI	Remedial Investigation
SHB	Substitute House Bill
TCP	Toxics Cleanup Program
UECA	Uniform Environmental Covenants Act
VCP	Voluntary Cleanup Program
WAC	Washington Administrative Code (rule)

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Executive Summary

Over the last several years, Washington State Department of Ecology's (Ecology's) capacity to review independent cleanups under the Voluntary Cleanup Program (VCP) process has not kept pace with the demand for services. Ecology worked together with interested stakeholders to obtain legislative authority to establish a separate, expedited review process under the VCP. The Expedited VCP process is a self-funding process where the customer pays the full price for the services that Ecology provides.

The Expedited VCP process includes:

- **Application.** The applicant must submit a complete application, including a Remedial Investigation (RI) or equivalent report. Ecology will send the Expedited VCP Customer (Customer) an invoice for the nonrefundable application fee, which is due within seven (7) calendar days. Ecology will accept or reject the application within 10 calendar days of receiving the nonrefundable application fee.
- **Working in the Expedited VCP process.** Ecology expects to provide an opinion on the RI or equivalent report within 90 calendar days of acceptance into the Expedited VCP process. Ecology expects to provide written opinion responses to complete requests within 90 calendar days. The Customer will submit quarterly progress reports. Ecology and the Customer agree to these and other expectations by signing the Expedited VCP agreement. The additional expectations should expedite reviews and foster a collaborative relationship.
- **Billing.** Upon acceptance into Expedited VCP, the Customer will have 30 calendar days to submit the initial prepayment. Ecology will cost recover against the prepayment balance and ask for subsequent prepayments as needed.
- **Close Out.** Ecology or the Customer can terminate an Expedited VCP agreement in writing at any time. After deducting any outstanding costs and the applicable close out fee from the prepayment balance, Ecology will refund any money remaining over \$10 to the Customer within 45 calendar days.

During the first year of implementation, Ecology will continue to engage with stakeholders and seek feedback. Additionally, Ecology anticipates starting rulemaking and revising the guidance as needed based on implementation experience within approximately the first year.

Purpose and Applicability

This document provides guidance for people performing or planning to perform independent cleanups under the Voluntary Cleanup Program (VCP) – Expedited process. This guidance does not apply to the Standard VCP process. People eligible to apply to the Expedited VCP process include those who have an ownership interest in or operate the facility, or have a contractual right to purchase, redevelop, or reuse the facility.

This guidance addresses the following topics:

- Purpose of the Expedited VCP process
- Differences between the Expedited and Standard VCP processes
- Eligibility criteria and project qualifications
- Expedited VCP process steps
- Application process and requirements
- Expectations for and commitments to Expedited VCP customers
- Fees and cost recovery
- Reasons for Expedited VCP process termination
- Project performance and revenue
- Affordable housing waiver

The guidance is based on the authority and requirements found in the [Model Toxics Control Act](#)¹ (MTCA) and [Substitute House Bill \(SHB\) 1290](#)². Ecology is authorized to implement the Expedited VCP process through interpretive guidance under RCW [70.105D.180](#)(4)³. Ecology may update this Guidance as needed and make adjustments based on experience implementing the process.

This guidance is designed to allow the reader to easily navigate between related sections. Cross-reference hyperlinks to related sections within this document are underlined and highlighted gray. Hyperlinks to external webpages or websites are underlined, with addresses spelled out in footnotes on first occurrence, or in References at the end of this document.

¹ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act>

² <https://app.leg.wa.gov/billsummary?BillNumber=1290&Chamber=House&Year=2019>

³ <https://app.leg.wa.gov/RCW/default.aspx?cite=70.105D.180>

Chapter 1: Introduction to Cleanups

This chapter provides background on the cleanup program established under the Model Toxics Control Act (MTCA), Chapter [70.105D RCW](#)¹. It also provides an overview of the steps used to investigate and clean up contaminated sites, and a summary of the different options for cleaning up those sites.

Cleanup Program

MTCA, Chapter [70.105D RCW](#), governs the cleanup of contaminated sites in Washington State. Voters passed the law in November 1988 as Initiative 97. The law became effective on March 1, 1989. Under that law, the Washington State Department of Ecology (Ecology) adopted the following rules, which describe the process and requirements for cleaning up contaminated sites:

- Chapter [173-340 WAC](#)¹, MTCA Cleanup Regulations, also known as the MTCA Cleanup Rule.
- Chapter [173-204 WAC](#)², Sediment Management Standards, also known as the SMS Rule or Sediment Cleanup Rule.

MTCA continues to have a powerful impact on our state. Since becoming law in 1989, more than 7,300 contaminated sites have been cleaned up as of June 30, 2020. That averages 238 completed cleanups per year, or one completed cleanup project about every 1.6 days. Ecology continues to take steps to leverage our resources to meet the demands of the growing number of sites, including through the Voluntary Cleanup Program (VCP).

Steps in the Independent Cleanup Process

Under the MTCA Cleanup Rule, the independent cleanup process involves the following basic steps:

- **Remedial Investigation (RI).** The RI serves as the mechanism for collecting data to characterize site conditions; determine the magnitude and extent of contamination; and assess risk to human health and the environment. The RI is used to establish cleanup standards and evaluate potential cleanup alternatives in the following step.
- **Feasibility Study (FS).** The FS uses information from the RI for the development, screening, and evaluation of cleanup alternatives to enable selection of a cleanup action for the site.

¹ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340>

² <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>

- **Cleanup Action Plan (CAP).** The CAP uses the information gathered during the previous phases. The CAP identifies preferred cleanup methods, and specifies cleanup standards and any other requirements at the site.
- **Cleanup.** Actual cleanup begins with CAP implementation. This includes design, construction, operation, and monitoring of cleanup actions.
- **Monitoring.** Effectiveness of the cleanup actions is monitored through sampling and reporting.
- **Site Use Controls.** The maintenance of any institutional or engineered controls is required as part of a cleanup action that leaves contamination behind. Such controls prevent or limit the movement of, or exposure to, hazardous substances remaining at the site after the cleanup is completed. Ecology conducts periodic reviews of sites with institutional or engineering controls for contamination at least every five years to evaluate the ongoing effectiveness and protectiveness of the cleanup action. For more information on how site use controls might influence a cleanup timeline see Restricting Future Property Use in Chapter 4.

Please visit Ecology's website for more information about [steps in the cleanup process](#)³.

³ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process>

Options for Contaminated Site Cleanup

Under the MTCA Cleanup Rule, contaminated sites may be cleaned up using one of three options:

1. **Ecology-conducted cleanups.** Ecology may clean up a contaminated site. This usually occurs when Ecology cannot identify a potentially liable person or when such persons are unable to pay for the cleanup. Ecology contracts with private companies to perform the cleanups.
2. **Ecology-supervised cleanups.** Ecology may authorize or require a potentially liable person to clean up a contaminated site under an agreed order, enforcement order, or a court-approved consent decree (known as a settlement).
3. **Independent cleanups.** Property owners and other persons may clean up a contaminated site independently unless Ecology is supervising the cleanup or is negotiating an order or decree to supervise the cleanup.

Table 1: Benefits and limitations of Independent cleanups.

Benefits	Limitations
Customer controls the cleanup scope and schedule, and determines the level of Ecology involvement.	Larger and more complex cleanups should be managed as an Ecology-supervised cleanup (see Eligibility in Chapter 2 for more information).
Customer can request an official opinion from Ecology. A “No Further Action” opinion (NFA) from Ecology usually satisfies financial institutions’ requirements.	Does not settle liability with the state or provide protection from third party contribution claims.

Technical Assistance Programs for Independent Cleanups

People who conduct an independent cleanup may request from Ecology or the Pollution Liability Insurance Agency (PLIA), as applicable, technical assistance on how to conduct the cleanup. The appropriate agency provides written opinions on whether the cleanup meets the substantive requirements of MTCA and if further remedial action is necessary. Which agency provides the services depends on several factors, including the type of site. Both agencies require payment for these services. The technical assistance programs are:

- **Ecology's Voluntary Cleanup Program.** Ecology's technical assistance program is the [Voluntary Cleanup Program](#)⁴ (VCP). Under the VCP, Ecology provides services to an independent cleanup that does not qualify for one of PLIA's technical assistance programs. As of July 2020, Ecology provides two options for obtaining services under the VCP:
 - **Standard VCP process.** Under this process, Ecology's reviews and technical assistance is funded from the Model Toxics Control Operating Account. The VCP customer pays only a portion of the process costs. When applying, the customer does not pay an application fee or submit a prepayment. Ecology provides requested services to the customer at an hourly rate. Generated revenue is deposited into the Model Toxics Control Capital Account, which funds cleanup and other environmental capital projects.
 - **Expedited VCP process.** Under this process, the Expedited VCP Customer (Customer) pays the full cost of the process. When applying, the Customer must submit a nonrefundable application fee. If accepted, the Customer must submit an initial prepayment. Ecology provides requested services to the Customer at an increased hourly rate, which is charged against the prepayment. Ecology also charges an appropriate close out fee upon termination of the agreement. All generated revenue is deposited into the Voluntary Cleanup Account, which funds the Expedited VCP process exclusively.
- **PLIA's Technical Assistance Programs.** PLIA has two technical assistance programs: the [Heating Oil Technical Assistance Program](#)⁵ (HOTAP) and the [Petroleum Technical Assistance Program](#)⁶ (PTAP). Only certain types of sites qualify for these programs. To help determine whether a site qualifies, see Ecology's [Agency Determination Checklist](#)⁷. PLIA provides the same services as Ecology under these two programs. PLIA provides these services for a one-time, flat fee. See the [PLIA website](#)⁸ for more information on fees and site eligibility.

⁴ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

⁵ <https://plia.wa.gov/heating-oil-technical-assistance-program/>

⁶ <https://plia.wa.gov/ptap/>

⁷ <https://fortress.wa.gov/ecy/publications/SummaryPages/1709059.html>

⁸ <https://www.plia.wa.gov/>

Chapter 2: Basics of the Expedited VCP Process

Over the last several years, Ecology's capacity to review independent cleanups under the Standard VCP process has not kept pace with the demand for services. In strong real estate markets, demand can exceed Ecology's capacity to provide prompt assistance and review. Even during periods of slower economic growth, Ecology has experienced steady demand for VCP services with surges when the economy rebounds. In addition, real estate developers often need quick turnaround times on deliverables to meet compressed schedules and enable financial transactions.

To manage excess demand, Ecology developed a wait list for the Standard VCP process. This reportedly delayed or discouraged many independent cleanup and development projects, particularly those working with compressed schedules.

In response, Ecology worked with interested stakeholders to obtain legislative authority to establish a separate, expedited review process under the VCP. The new Expedited VCP process is self-sustaining with dedicated staff, to respond reliably to the needs of developers working under compressed schedules. [SHB 1290](#) passed in 2019 and the Expedited VCP process launched in July 2020.

The goals of the Expedited VCP process include:

- Meet the needs of Customers with challenging project schedules.
- Support and maintain project progress towards a No Further Action (NFA) determination by providing opinions that indicate whether the cleanup actions meet the substantive requirements of MTCA.
- Support a collaborative relationship between the Expedited VCP Customer (Customer) and Ecology staff, to accomplish the above-stated goals.

The Expedited VCP process does **not**:

- Change the substantive requirements for cleanups under MTCA.
- Guarantee an NFA opinion.
- Create a consultant relationship between the Customer and Ecology.
- Constitute a settlement with the State (as under a Consent Decree).

Independent cleanups must meet the substantive requirements of the Model Toxics Control Act (MTCA), [Chapter 70.105D RCW](#), and its implementing regulations, Chapters [173-340](#) and [173-204 WAC](#). Additionally, Customers should refer to Ecology's applicable [policies and guidance](#)¹.

Eligibility

Ecology may reject Expedited VCP applications for any of the reasons listed below.

Ecology will not refund the nonrefundable application fee for any rejected applications.

The following projects are not eligible for the Expedited VCP process:

- **Eligible for technical assistance from the Pollution Liability Insurance Agency (PLIA).** The project qualifies for one of [PLIA's technical assistance programs](#). Ecology requires VCP applicants to complete and submit the [Agency Determination Checklist](#) as part of their application to determine eligibility.
- **Requires Ecology supervision.** Ecology has determined the cleanup requires Ecology supervision based on [site-specific conditions](#) discussed later in this chapter.
- **Ecology conducted or supervised cleanups.** The project overlaps with a cleanup that Ecology currently is conducting or supervising under an agreed order, enforcement order, or consent decree.
- **Planned Ecology supervision.** Ecology has decided to supervise the cleanup and may initiate, or has initiated, discussions for an agreed order or consent decree.
- **Conflict with existing VCP project.** The project overlaps with an existing VCP project in either the Standard or Expedited VCP process.
- **History of not meeting expectations.** Ecology may reject an Expedited VCP application based on the applicant's previous history of conduct that is inconsistent with the mutual expectations of the Expedited VCP process. Ecology may review the applicant's records at prior projects in either the Standard or Expedited VCP process. This review may include previous correspondence regarding a customer's conduct, or notices of nonperformance for conduct inconsistent with the mutual expectations of the Expedited VCP process.
- **Payment history.** Ecology may reject an Expedited VCP application based on a history of payment delinquency in either the Standard VCP process or the Expedited VCP process. Expedited VCP applicants may not have any outstanding cleanup charges.

¹ <https://ecology.wa.gov/Regulations-Permits/Plans-policies/Toxics-cleanup-policies>

- **Incomplete investigation.** The RI or equivalent report submitted to Ecology does not meet the requirements in the [Remedial Investigation Checklist](#)².
- **Incomplete application.** The application did not include all of the materials outlined in [Chapter 3: Application](#). Common reasons Ecology finds an application incomplete include:
 - The applicant did not submit a report for review.
 - The applicant did not request an opinion at the time of application.
 - The applicant did not submit all [Environmental Information Management \(EIM\)](#)³ data.
 - The Expedited VCP agreement did not include a wet signature or as otherwise outlined on the [VCP webpage](#). At the time of publication, Ecology was accepting electronic signatures because of the coronavirus disease of 2019 (COVID-19).
- **Ineligible customer.** Any person who has any ownership interest in or operates the facility or has a contractual right to purchase, redevelop, or reuse the facility may sign the Expedited VCP agreement and become the Customer. A consultant, lawyer, or other contractor may not sign the Expedited VCP agreement unless they have the ownership interest, operate the facility, or have the contractual rights described here.

Site-specific conditions

Ecology may reject Expedited VCP applications based on the following five site-specific conditions. The applicable Ecology Section Manager will make the determination. These eligibility determinations are final and non-negotiable. Those with projects rejected due to site-specific conditions, may not reapply to either the Standard VCP or the Expedited VCP processes.

1. **Threat:** Projects on contaminated sites that pose a significant or immediate threat to human health or the environment.
2. **Comingled contaminants:** Projects on contaminated sites that include comingled contaminants from multiple releases, including the potential for migration from off-property.
3. **Contaminated sediment:** A release at the site is known or suspected to contaminate surface water or sediment.

² <https://fortress.wa.gov/ecy/publications/SummaryPages/1609006.html>

³ <https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data>

4. **Multiple properties:** A release at the site is known or suspected to contaminate multiple parcels of real property.
5. **Public interest:** There is, or is likely to be, significant public interest in the site cleanup.

If any of these conditions might affect the project, **Ecology highly recommends requesting the Recommended VCP Consultation Meeting (discussed in Chapter 2) before applying** to the Expedited VCP process and submitting the nonrefundable application fee.

Projects Currently Enrolled in the Standard VCP Process

Projects currently enrolled in the Standard VCP process may be eligible to apply to the Expedited VCP process. Eligibility depends on whether the project is currently on the Standard VCP process wait list or whether Ecology has assigned a cleanup project manager under the Standard VCP process.

- **On Wait List.** The potential Customer may apply to the Expedited VCP process before terminating the existing Standard VCP agreement. If Ecology accepts the application, Ecology will terminate the existing Standard VCP agreement. If Ecology rejects the Expedited VCP application, the project will remain on the wait list for the Standard VCP process.
- **Assigned Cleanup Project Manager.** Potential Customers with an assigned cleanup project manager under the Standard VCP process must terminate the existing agreement before applying to the Expedited VCP process. Rejected applicants may reapply to the Standard VCP process or wait for the next open application period for the Expedited VCP process. When reapplying to the Standard VCP process:
 - Ecology will reject applications qualifying for one of [PLIA's technical assistance programs](#).
 - Ecology will not prioritize reapplying applications over previously submitted applications. Consequently, the project may end up on the wait list for the Standard VCP process until Ecology can assign a cleanup project manager.

Typically, Ecology does not bill review time due to transitions in cleanup project managers. However, Ecology will require that the Customer pay for any VCP staff time, in either process, due to a project changing between the Expedited and Standard VCP processes.

Recommended VCP Consultation Meeting

The optional VCP consultation offers an opportunity for Ecology to provide a potential VCP Customer team with information related to the VCP processes and answer questions. Ecology will provide technical assistance to help direct the applicant into the most appropriate cleanup process for their needs (VCP, [PLIA](#), or Ecology-supervised cleanup). Ecology will not negotiate or discuss the details of Ecology's previous written opinions during these meetings.

The one-hour free consultation with Ecology regional staff will cover the following topics:

- [Agency Determination Checklist](#)
- Introduction to the Expedited and Standard VCP processes
- Differences between the Expedited and Standard VCP processes
 - Customer eligibility restrictions
 - Application requirements and expectations
 - Application process and timelines
 - Billing structure and rates
- Site-specific conditions that may affect VCP eligibility
- Reporting and documentation requirements
- Requirements for a complete request for an opinion
- Response times for Ecology and VCP Customer team

Ecology will provide the VCP Customer team an opportunity to ask questions about these topics. However, Ecology will not provide site-specific technical assistance on how to clean up a site or provide written opinions on the sufficiency of any planned or completed remedial actions. The consultation does not guarantee acceptance into either the Standard or Expedited VCP processes.

Requesting a [VCP consultation](#)⁴ will require a list of proposed participants and their individual roles on the potential VCP Customer team, including identification of any legal counsel who will be present.

⁴ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program/Before-you-apply#QualifyingForVCP>

Overview of Process

Ecology designed the Expedited VCP process to increase the efficiency and predictability of when Ecology provides opinions. Due to limited capacity, the Expedited VCP process will accept applications only during specific times. Subscribe to the Expedited VCP [email list](#)⁵ to receive notices and updates of when Ecology opens or closes application periods. The [Expedited VCP webpage](#) also lists the status of application periods. Below are the steps of the Expedited VCP process, which are also outlined in Figure 1.

- 1. Recommended VCP Consultation (Optional).** Ecology provides a free VCP consultation through the Standard VCP process to help direct applicants into the correct cleanup process (Standard VCP process, Expedited VCP process, PLIA's technical assistance programs, or Ecology-supervised cleanup). Ecology will also go over the Expedited VCP process, application materials, and expectations to help determine if the project appears eligible. The VCP consultation:
 - Is an opportunity to discuss eligibility concerns for the Expedited VCP process, especially [site-specific conditions](#) discussed later in this chapter.
 - Is not an opportunity to request site-specific technical assistance on how to clean up the site, or opinions on the sufficiency of planned or completed remedial actions.
 - Does not guarantee acceptance into either the Standard or Expedited VCP processes.
- 2. Application Submission.** The applicant must submit a complete application, including an RI or equivalent report. Ecology will send the Customer an invoice for the nonrefundable application fee, which is due within seven (7) calendar days of the invoice date. See [Chapter 3: Application](#) for details on how to submit a complete application. By focusing the first opinion on the remedial investigation, Ecology can gain a more complete understanding of the site and improve the speed of responses to future requests for technical assistance and written opinions.

⁵ <http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=EXPEDITED-VCP&A=1>

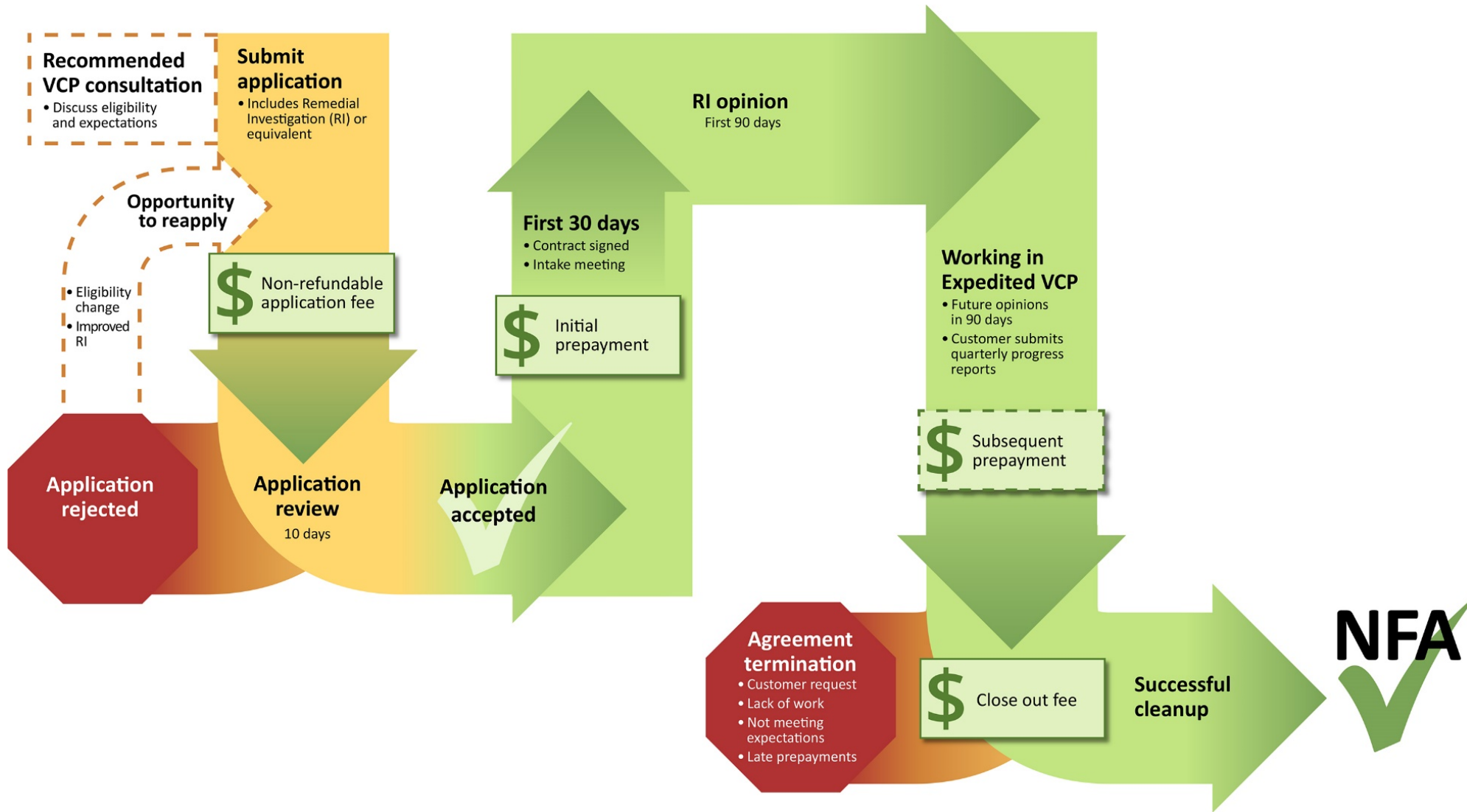


Figure 1: The Expedited VCP process increases administrative efficiency to help Ecology meet the needs of Customers who have compressed schedules.

3. **Application Response.** Ecology expects to decide whether to accept or reject the application within 10 calendar days of receiving the nonrefundable application fee.
 - **Rejection:** See Eligibility earlier in this chapter for more detail on reasons Ecology may reject Expedited VCP applications. See Reapplying to the Expedited VCP Process in Chapter 3 for information on when rejected applicants may reapply.
 - **Acceptance:** If the application is accepted, Ecology will sign the Expedited VCP agreement and provide an acceptance letter. The agreement becomes effective immediately upon Ecology's signature. Ecology will then start reviewing the RI or equivalent.

4. **Entering Expedited VCP Process.**
 - **Prepayment:** The Customer must submit the initial prepayment within 30 calendar days of Ecology sending the application acceptance letter. Ecology will charge an hourly rate for requested services and deduct these charges from the prepayment. Ecology will reserve a portion of the prepayment for the applicable close out fee, which is deducted when the agreement ends (see Chapter 5: Fees and Cost Recovery).
 - **Intake Meeting:** Unless waived by Ecology, Ecology and the Expedited VCP customer team will meet to review the expectations and discuss project-specific details at an in-person or virtual meeting. Ecology expects to hold the Intake Meeting (Chapter 4) within 30 calendar days of signing the agreement.

5. **RI Opinion.** Ecology expects to provide the Customer a written opinion on the RI or equivalent within 90 days of accepting into the Expedited VCP process. If the application includes documentation of further remedial action, Ecology may instead provide the Customer an initial response within 90 days that includes a timeline for an opinion covering both the RI and further remedial actions.

6. **Ongoing Expedited VCP Expectations.** Ecology designed the Expedited VCP process to help foster a collaborative and responsive relationship with the Customer team. Chapter 4: Expectations details the Expedited VCP process expectations.

7. **Close Out.** The Customer or Ecology can terminate the Expedited VCP agreement for any reason by providing written notice to the other party. The effective date of termination is the date of the written communication. Ecology's issuance of a Site NFA opinion also terminates the agreement. Ecology will deduct the appropriate close out fee

from the prepayment. If the remaining prepayment balance is over \$10, Ecology will refund the remaining funds to the Customer within 45 calendar days of the termination. See Chapter 6: Project Termination for more information.

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Chapter 3: Application

Submit an application electronically. See the [Expedited VCP webpage](#) for additional details on how to submit an application. The Expedited VCP application materials must include the following:

1. [VCP application](#),¹ completed and signed
2. Signed [Expedited VCP agreement](#)²
3. Completed [Agency Determination Checklist](#)
4. Complete RI report or equivalent ready for Ecology's review
5. Documentation of all other remedial actions at the site, including investigations (such as Phase I or II Environmental Site Assessments) or interim actions
6. All [Environmental Information Management \(EIM\)](#) data submitted electronically
7. Project schedule.

Ecology will reject incomplete applications. Once a complete application is received, Ecology will send the Customer an invoice for the nonrefundable application fee. The nonrefundable application fee is due with seven (7) calendar days of the invoice date or the application will be rejected.

Application and Agreement

Ecology must receive a complete VCP application, including the appropriate signature on the last page. The appropriate member of the prospective Customer team must sign the Expedited VCP agreement with an original ink signature, unless otherwise specified on the [VCP webpage](#). At the time of publication, Ecology was accepting electronic signatures due to COVID-19. Refer to the [Eligibility](#) section in Chapter 2 for information on which Customer team member can sign the agreement.

Agency Determination Checklist

The [Agency Determination Checklist](#) provides assistance to help potential Customers apply to the appropriate technical assistance program. Projects eligible for one of PLIA's technical assistance programs are not eligible for either the Standard or Expedited VCP processes.

¹ <https://fortress.wa.gov/ecy/publications/summarypages/ECY02074.html>

² <http://ecyapfpass/Biblio2/SummaryPages/ECY070633.html>

Remedial Investigation and Other Remedial Actions

To provide technical assistance and opinions as expeditiously as possible, Ecology requires Expedited VCP applicants to complete and submit an RI or equivalent report with their application.

The RI is a critical step in the cleanup of a contaminated site. The purpose of an RI is to collect sufficient information about the site to establish cleanup standards and develop cleanup action alternatives. The feasibility study (FS) develops and evaluates cleanup action alternatives based on the information collected in the RI. See [WAC 173-340-350](#).

The RI or equivalent report must include the information specified by Ecology in the [Remedial Investigation Checklist](#). The report should:

- Document all remedial actions previously conducted at the site.
- Summarize and reference previously documented remedial actions.
- Include tables and figures that clearly present soil and groundwater sampling locations and analytical results from previous investigations.
- Clearly flag results of previous investigations that are no longer representative of current conditions (e.g., soil that has been subsequently excavated or sampled more recently).

For additional guidance on what to include in the RI report, see [Submittal Requirements for Technical Reports](#) in Chapter 4.

Ecology will reject applications that do not include an RI report or that do not include the information specified in the Remedial Investigation Checklist. Ecology encourages Expedited VCP applicants to review and apply the Remedial Investigation Checklist requirements to their reports before applying. If Ecology rejects an application due to failure of the Remedial Investigation Checklist, the rejection letter will include a completed Remedial Investigation Checklist with Ecology comments explaining the points of failure.

Ecology will not consider additional reports during the 10-day application review.

Environmental Information Management (EIM) Data

Submit all environmental data to the [EIM database](#), in accordance with Toxics Cleanup Program (TCP) [Policy 840](#)³. Ecology will not accept applications without the appropriate EIM data submission.

EIM data helps Ecology provide opinions in a more timely fashion. Ecology expects to approve initial EIM data within 30 days of accepting the Expedited VCP application. Members of current and potential Expedited VCP Customer teams should readily respond to requests from Ecology EIM data coordinators, preferably within seven calendar days, throughout the Expedited VCP process. Ecology recommends that applicants upload EIM data as early as possible to minimize processing delays.

The first three letters of the study identification name (ID) **and** file name must be “**XVC**” for easy identification. List all study ID and file names in the appropriate section of the VCP application. Not including “**XVC**” in the filename and study ID may lead to processing delays. Please review the resources in the [EIM Help Center](#) to properly submit EIM data.

Project Schedule

Submit a complete project schedule with the application. Ecology will use the schedule for workload planning and determining capacity to accept additional projects into the Expedited VCP process. Because the Expedited VCP process must be self-funding, Ecology’s capacity depends on the schedules of those projects already enrolled. Ecology understands the dynamic nature of cleanups and associated development projects. The schedule’s length or certainty will not affect the eligibility of the project. After acceptance, Ecology will require updates to the schedule as part of the [Quarterly Progress Reports](#) discussed in Chapter 4. However, the Customer should communicate schedule changes to Ecology as soon as possible.

Nonrefundable Application Fee

During an open application period, Ecology will review applications for the Expedited VCP process in the order received. Applicants should subscribe to the Expedited VCP process [email list](#) for details on when applications periods open. Ecology will also list the status of the application period on the [Expedited VCP webpage](#). Ecology will provide applicants with an invoice to pay the nonrefundable application fee of \$3,000 (see Table 2). The application fee covers Ecology’s costs to review applications.

The applicant must pay the fee before Ecology will start reviewing the application. The applicant has seven (7) calendar days from receiving the invoice to pay the nonrefundable

³ <https://fortress.wa.gov/ecy/publications/documents/1609050.pdf>

application fee. If the Expedited VCP applicant does not pay the nonrefundable fee within seven (7) calendar days, Ecology will reject the application and schedule the next application for review.

Table 2: Nonrefundable application fee

Nonrefundable Fees	Amount
Application Fee: Due within seven (7) calendar days of receiving the invoice	\$3,000

Ecology will assign an Expedited VCP project number to each application receiving an invoice for the nonrefundable application fee. The assignment of an Expedited VCP project number does not mean that Ecology has accepted the application, only that Ecology will review the application. Ecology will not refund the application fee, regardless of the outcome of the application review – including rejections due to ineligibility.

Please see [Chapter 5: Fees and Cost Recovery](#) for full schedule of rates and fees after acceptance into the Expedited VCP process.

Reapplying

Applicants may reapply to the Expedited VCP process, if the circumstances related to the rejection of the previous application change.

For example, if Ecology rejected an application because of an incomplete RI, the applicant may complete additional work, revise the RI report, and reapply.

The following applies to applicants reapplying to the Expedited VCP process:

- The applicant can only reapply during a future open application period.
- The applicant must again pay the nonrefundable application fee.
- The applicant will not receive priority over other applicants.
- Ecology will consider applications in the order received.

Applications rejected due to [site-specific conditions](#) or eligibility for one of PLIA's technical assistance programs cannot reapply.

Chapter 4: Expectations and Commitments

This chapter specifies Ecology's expectations for and commitments to Expedited VCP Customers (Customers). By signing the Expedited VCP agreement, the Customer agrees to meet Ecology's expectations outlined in this Guidance.

Intake Meeting

Unless Ecology waives this requirement, the Customer must commit to participating in an intake meeting within 30 calendar days of application acceptance. Ecology may schedule the intake meeting in person or by video conference.

In advance of the meeting, the Customer must commit to providing a list of meeting participants and their roles, including legal counsel. The presence of the Customer's legal counsel may delay the meeting to allow a representative from the Attorney General's Office to attend.

The intake meeting will address the following:

- Introduction to the Expedited VCP process and expectations to remain enrolled.
- Desired outcome of the cleanup, including Restricting Future Property Use discussed later in this chapter.
- Site history, including past land use, chemical storage or usage, remedial efforts to date.
- Anticipated future land use at the Site.
- Expectations of deliverables, timelines, and conduct.

The meeting provides an opportunity for the Customer to share information with Ecology related to the independent cleanup. Ecology will listen and ask clarifying questions to understand the cleanup and Customer goals.

Quarterly Progress Reports

The Customer must commit to submitting quarterly progress reports in March, July, September, and December via email or as otherwise specified by Ecology's Expedited VCP cleanup project manager. These progress reports are due the 10th day of each reporting month and must include the following information:

- Description and status of Site characterization or cleanup work (completed during past quarter or ongoing work).

- A list of pending opinion requests to Ecology and expected date for next request for Ecology opinion.
- Summary of dates and titles of documents submitted to Ecology for review in the last quarter.
- Type of documents and opinion requests planned for submittal to Ecology during the next quarter.
- Any updates to the project schedule showing the previously mentioned activities and milestones.
- A description of schedule delays or changes from the prior quarter and reasons for those changes.
- Changes in key project team personnel.
- Anticipated changes at the Site, such as property ownership, changes to potential future use, new or obsolete access restrictions, or anything that could affect the cleanup.

The Quarterly Progress Reports keep both parties informed and the cleanup activities moving forward. Even though the quarterly report requires notification of specific changes, such as transitions in project personnel or the potential for ownership transfers, the Customer must commit to communicating these changes as soon as possible.

Ecology Response to Requests for Opinions

Written opinions document Ecology's determinations as to the sufficiency of independent remedial actions, including whether the remedial actions meet the substantive requirements of MTCA and whether further remedial action is necessary.

Ecology expects to provide Customers an opinion letter on the RI report within 90 calendar days of application acceptance. If the RI is sufficient, Ecology commits to begin review of other submitted documents, such as an FS report. If Ecology decides to review other submitted documents and needs more than 90 days to write an opinion, Ecology commits to providing the Customer an initial response within 90 days. This initial response includes a timeline for an opinion that covers both the RI and the further remedial action. Ecology may provide preliminary comments on the FS report or other submitted documents, even if Ecology determines the site characterization is not sufficient.

Ecology expects to provide future written opinions in response to complete requests for opinion (including the [Request for Opinion form](#)¹) within 90 calendar days, as long as the Customer maintains communication regarding adjustments to timelines and project schedule.

Ecology will **not** negotiate the language, content, or any substance of its written opinions. However, Ecology will encourage an open dialogue to include discussion of optional approaches toward identifying concerns or deficiencies.

The Customer should expect the possibility of increased project timeframes in the following situations:

- The final cleanup remedy requires restrictions on the future property use.
- The Expedited VCP project occurs on a contaminated site listed on the [Hazardous Sites List](#), which requires a public comment period before Ecology issues the NFA.

Restricting Future Property Use

Under the MTCA Cleanup Rule, certain circumstances require cleanup actions to include institutional controls. These limit or prohibit activities and uses that may result in exposure to hazardous substances remaining at the site, or that may interfere with the integrity of the cleanup action (WAC [173-340-440](#)).

An environmental covenant is typically used as the legal mechanism for imposing activity and use restrictions on affected properties. The Uniform Environmental Covenants Act (UECA), Chapter [64.70 RCW](#)², establishes the procedures for imposing such restrictions so that they will be valid and enforceable over the long term.

During the [Intake Meeting](#) discussed in Chapter 2, Ecology will discuss the goals of the cleanup and anticipated future land use for the properties included in the project with the Customer. Ecology will work with the Customer early in the cleanup process to evaluate the appropriateness of institutional controls for their project. The Ecology Section Manager will make the final determination as to whether a cleanup action that relies on institutional controls is justified under the MTCA Cleanup Rule.

If the Customer selects a cleanup action that relies on institutional controls, the Customer should expect delays in the issuance of written opinions. Additional time is typically needed to prepare, review, sign, and record environmental covenants. The covenants may also require a legal review by the Attorney General's Office.

¹ <https://fortress.wa.gov/ecy/publications/summarypages/ECY070219.html>

² <https://app.leg.wa.gov/rcw/default.aspx?cite=64.70>

Additionally, covenants will require the Agreement and Maintenance Close Out Fee as outlined in the [Close Out Fee](#) section in Chapter 5.

Removing Sites from Hazardous Sites List

If a site is listed on the [Hazardous Sites List \(HSL\)](#)³ the Customer should not expect Ecology to issue a Site No Further Action (NFA) opinion until after Ecology has completed the process for removing the site from the HSL.

Before delisting a site, Ecology must notify and provide an opportunity for the public to comment on the proposal to delist (WAC [173-340-330](#)). Based on the comments received, Ecology will either remove the site from the HSL and issue a Site NFA opinion, or determine that further remedial action is still necessary and issue a Site Further Action opinion.

Submittal Requirements for Technical Reports

This section describes the regulatory requirements governing the writing and submission of independent remedial action plans and reports. See [WAC 173-340-840\(4\)](#).

Content

The Customer's plan or report does not need to be the same in title or format as the documents required under MTCA. However, the plan or report must still contain sufficient information for Ecology to determine whether the remedial actions meet the substantive requirements of MTCA. The scope and level of detail required depends on site-specific conditions and the complexity of the cleanup. See WAC [173-340-515](#)(3) and (4).

Include the information in the following checklists, as applicable:

- [Remedial Investigation Checklist](#) (applies to any investigation or characterization).
- [Feasibility Study Checklist](#)
- [Cleanup Action Plan Checklist](#)⁴

If the report builds on information or data contained in previous reports, also include:

- A general site summary with relevant background information.
- Information from the previous reports, by attaching or specifically referencing it.
- Historic and new data for review in figures and tables.

³ <https://fortress.wa.gov/ecy/publications/UIPages/PublicationList.aspx?IndexTypeName=Program&NameValue=Toxics+Cleanup&DocumentTypeName=Newsletter>
⁴ <https://fortress.wa.gov/ecy/publications/SummaryPages/1609008.html>

Cover letter

Include a cover letter describing the plan or report that specifies the desired type of Ecology response (such as an official opinion). If the cleanup uses a [model remedy](#),⁵ identify which one in the cover letter. See [WAC 173-340-840\(1\)](#).

Number of copies

Provide **one** (1) hard copy and an electronic copy in the form of a searchable PDF of the plan or report. Ecology may require additional copies. See [WAC 173-340-840\(2\)](#).

Professional certification

Documents submitted containing geologic, hydrologic, or engineering work must be under the seal of a licensed professional. See [WAC 173-340-840\(3\)](#) and [173-340-400\(6\)\(b\)](#). For guidance on what work requires a license, refer to the following:

- Geologists: [Chapter 18.220 RCW](#)⁶ | [Chapter 308-15 WAC](#)⁷ | [Licensing Board](#)⁸
- Engineers: [Chapter 18.43 RCW](#)⁹ | [Title 196 WAC](#)¹⁰ | [Licensing Board](#).¹¹

Visuals

Include maps, figures, photographs, and tables to clarify information or conclusions. All visuals must be legible. All maps, plan sheets, drawings, and cross-sections must meet the following requirements:

- **Size:** To facilitate filing and handling, be on paper no larger than 24 x 36 inches and no smaller than 8-1/2 x 11 inches. Photo-reduced copies of plan sheets may be submitted, but at least one full-sized copy of the photo-reduced sheet must be included in the submittal.
- **Scale:** Identify and use appropriate and consistent scales to show all required details in sufficient clarity.
- **Labeling:** Clear labeling includes numbers, titles, a legend of all symbols used, and specify drafting or origination dates.

⁵ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/MTCA-model-remedies>

⁶ <https://app.leg.wa.gov/RCW/default.aspx?cite=18.220>

⁷ <https://app.leg.wa.gov/WAC/default.aspx?cite=308-15>

⁸ <https://www.dol.wa.gov/business/geologist/geoboardinfo.html>

⁹ <https://app.leg.wa.gov/RCW/default.aspx?cite=18.43>

¹⁰ <https://app.leg.wa.gov/wac/default.aspx?cite=196>

¹¹ <http://www.dol.wa.gov/business/engineerslandsurveyors/>

- **Direction:** Contain a north arrow.
- **Elevations:** Use United States Geological Survey datum as a basis for all elevations.
- **Topography:** Where grades are to be changed, show original topography in addition to showing the changed site topography. This requirement does not apply to conceptual diagrams or sketches where before and after topography is not needed to convey the necessary information.
- **Planimetric views:** For planimetric views, show a survey grid based on monuments established in the field and referenced to state plane coordinates. This requirement does not apply to conceptual diagrams or sketches when the exact location of items shown is not needed to convey the necessary information.
- **Cross-section views:** For cross-sections views, identify cross-referenced location with the appropriate planimetric view. A reduced diagram of a cross-section location map should be included on the sheets with the cross-sections.

Sampling Data

Include environmental sampling data in both a printed form and an electronic form capable of being transferred into Ecology's data management systems. See [WAC 173-340-840\(5\)](#) and [TCP Policy 840](#). For detailed instructions, see [requirements for submitting cleanup site data](#)¹².

Appendices

Include appendices that provide principal information the Customer relied on to plan or conduct the remedial action and prepare the submittal. See [WAC 173-340-840\(6\)](#).

Requesting an Opinion

When requesting an opinion from Ecology, provide a completed [Request for Opinion Form](#) and a [Terrestrial Ecological Evaluation Form](#)¹³ if required.

¹² <https://ecology.wa.gov/Regulations-Permits/Reporting-requirements/Data-submittal-requirements-for-cleanup-sites>

¹³ <https://fortress.wa.gov/ecy/publications/SummaryPages/ecy090300.html>

Mutual Commitments

Ecology designed the Expedited VCP process to encourage and expedite more cleanup and redevelopment projects, by providing more predictable response times to requests for written opinions on independent remedial actions. To make this possible, both Ecology and the Customer must commit to providing clear, timely, concise, and consistent communication. This broadly includes:

- Creating and fostering a respectful professional relationship.
- Being forthcoming and timely with facts and data pertaining to the cleanup.
- Promoting a responsive relationship by responding within seven (7) calendar days to all inquiries by the other party, including timely follow-up as necessary.
- Promoting flexibility during the cleanup process, such as using helpful tools like interim deliverables and document outlines.

Ecology Commitments to Customers

Ecology commits to providing clear, timely, concise, and consistent communication regarding scheduling, responses to questions, and target dates for opinion letters. This includes advance notice of Ecology's schedule changes. Additional commitments:

- Providing all official correspondence by email, followed by hard copy as needed.
- Reducing the impact of transitions of Ecology staff and providing advance notice as necessary. Ecology will not bill the Customer for costs incurred due to staff transitions within the Expedited VCP process.
- Providing monthly financial statements that show the current prepayment balance and summary of the previous month's activity.

Customer Commitments to Ecology

A key expectation of the Customer includes complete and quality deliverables. Ecology expects Customers to provide clear, concise, and timely communications. Additional commitments include:

- **Complete Requests for Opinion:** Submissions must provide complete information that meets the requirements of MTCA and Expedited VCP process.
- **Timely technical documents:** Provided to Ecology upon completion or on a timely basis.
- **Quality reports:** Submitted to Ecology consistent with [Submittal Requirements for Technical Reports](#) earlier in this chapter.
- **Regularly updated EIM Data:** Ecology expects the Customer team to regularly update their EIM data to prevent a processing backlog for Ecology, which could cause project delays for the Customer. A complete request for opinion will include the most recent submission of EIM data by the Expedited VCP Customer team. While enrolled in the Expedited VCP process, the VCP Customer team is expected to respond to Ecology EIM data coordinators, preferably within seven (7) calendar days.

EIM data connected to the Expedited VCP process must include an “XVC” as the first letters of the study ID **and** file name for easy identification. Not including “XVC” in the filename and study ID may lead to processing delays. Please review the resources in the [EIM Help Center](#) to properly submit EIM data. An Ecology cleanup project manager must review and approve EIM data before issuing an NFA, in accordance with Ecology [Policy 840](#).

- **Notice of property transfer:** The Customer must notify Ecology **at least 30 days** before an expected transfer in ownership of the facility, even if the Customer will not change after the transfer. See [Customer Change Due to Property Transfer](#) in Chapter 6 for more information.

Consequences for Not Meeting Expectations

In the event the Customer fails to meet expectations, Ecology will provide the Customer notice and an opportunity to correct the situation. If the Customer does not adequately correct it, Ecology may terminate the Customer from the Expedited VCP process. For more information, see termination due to [Non-performance](#) in Chapter 6.

Chapter 5: Fees and Cost Recovery

Once accepted into the process, the Expedited VCP Customer (Customer) must pay all costs that Ecology incurs related to services requested. This includes costs for Ecology staff, legal services from the Attorney General’s Office (as needed), and travel. Ecology will deduct all costs from the prepayment balance and request additional prepayments as needed. For information on fees before acceptance, see Nonrefundable Application Fee in Chapter 3

Hourly Cost Recovery Rates

Ecology staff will charge (that is, cost recover) one of two hourly rates when working on an Expedited VCP project: a technical or a non-technical rate. The rate charged will depend on the employee’s job classification. The Expedited VCP cleanup project manager and other technical staff will charge at the technical cost recovery rate. Non-technical staff, such as those leading public comment periods for ranked sites, will charge at the non-technical rate. Ecology reviews and updates cost recovery rates annually.

Table 3: In the Expedited VCP process, Ecology staff will cost recover at one of two hourly rates.

Hourly Cost Recovery Rates	Amount
Technical Cost Recovery Rate	\$180
Non-Technical Cost Recovery Rate	\$120

Ecology will endeavor to reduce the impact of transitions of staff and provide advance notice as soon as possible when changes occur. Ecology will not bill the Customer for costs incurred due to staff transitions within the Expedited VCP process.

However, if the Customer switches between the Expedited and Standard VCP processes, Ecology will charge the necessary staff time (at that rate of the applicable VCP process) to transition the project between cleanup project managers.

Prepayment

As part of the monthly billing process, Ecology will:

- Charge the previous month's costs against the prepayment.
- Provide the Customer a summary of monthly costs and the remaining prepayment balance.
- Request the subsequent prepayment, if the money available approaches or falls below the prepayment threshold.

Charging a cost recovery rate against a prepayment allows Ecology to streamline the process and proactively engage the Customer to avoid stop-work orders and other time delays. When Ecology or the Customer terminates the agreement, Ecology will remove all costs and the applicable close out fee from the prepayment. Within 45 calendar days of the written agreement termination, Ecology will refund the remaining prepayment to the Customer. Ecology will not provide refunds for balances below \$10. Prepayment amounts are outlined below in Table 4.

Table 4: Prepayment amounts and prepayment threshold

Prepayments	Amount
Initial Prepayment	\$20,000
Prepayment Threshold	\$5,000
Subsequent Prepayment	\$10,000

Initial Prepayment

When accepting the Expedited VCP application, Ecology will sign the agreement, send the application acceptance to the Customer, and begin technical review on the RI. The Customer must submit the initial prepayment within 30 calendar days of the date on the invoice. Ecology will provide instructions to the Customer, along with their payment options and acceptance letter.

If Ecology does **not** receive the initial prepayment within 30 calendar days, Ecology will terminate the Expedited VCP agreement and cease work immediately, including reviewing reports and drafting pending opinions. In such cases, the Customer must still pay for:

- Any costs incurred by Ecology to review the RI (or equivalent) and other submitted materials prior to agreement termination; and
- The Agreement Close Out Fee.

After termination due to non-payment of the initial prepayment, Ecology will send the Customer an invoice for the outstanding amount. If Ecology does not receive payment within 60 calendar days of the new invoice date, Ecology may send the bill to collections. The Customer must pay all collection agency fees. Not paying, or delinquent payments of prepayments, may affect future Expedited VCP application eligibility.

Subsequent Prepayment

Each month, Ecology will charge costs incurred to the current prepayment balance. If at that time, the prepayment level approaches or crosses the prepayment threshold, Ecology will invoice the Customer for the subsequent prepayment. Customers will have 30 calendar days from the invoice date to provide the subsequent prepayment.

If a Customer does not provide the entire prepayment within 30 calendar days, Ecology will stop work on the project and notify the Customer in writing. If the Customer does not provide the entire prepayment within seven (7) calendar days of receiving the written notice, Ecology may terminate the agreement.

Close Out Fee

Ecology will deduct the applicable close out fee from the prepayment when the Expedited VCP agreement ends. Ecology will refund any remaining amount over \$10 to the Customer within 45 calendar days.

Table 5: Close out fees are deducted from the prepayment at the end of the Agreement.

Close Out Fees – End of Agreement	Amount
Agreement Close Out Fee	\$1,500
Agreement and Maintenance Close Out Fee	\$9,000

1. **Agreement Close Out Fee.** This fee applies to any project **not** requiring Ecology to conduct periodic reviews. This fee covers Ecology's costs associated with closing out the agreement. After termination, Ecology will deduct the Agreement Close Out Fee from the prepayment balance. The Agreement Close Out Fee typically applies for the following termination reasons:
 - Customer withdrawal
 - Customer change due to property transfer
 - Non-performance
 - Planned Ecology supervision
 - Immediate cause for termination
 - **NFA.** Ecology issued a Site NFA opinion that does not require periodic reviews to ensure the cleanup remedy remains protective of human health and the environment.

See [Chapter 6: Project Termination](#) for more details.

2. **Agreement and Maintenance Close Out Fee.** This fee applies to Expedited VCP projects that require Ecology to conduct periodic reviews. This typically occurs when Ecology issues a Site NFA opinion or a Property-specific NFA opinion that requires post-cleanup requirements under MTCA. The higher close out fee covers Ecology's costs of performing the first review. Ecology will terminate the Expedited VCP agreement after issuing a NFA opinion. After paying the Agreement and Maintenance Close Out Fee, the Customer will not receive any further invoices for staff completing future periodic reviews.

If the remaining prepayment balance is less than Ecology's final costs and applicable close out fee, Ecology will bill (that is, invoice) the Customer for the remaining charges. The Customer must pay all outstanding charges before Ecology will release a final opinion. If Ecology does not receive payment within 60 calendar days of the date on the invoice, Ecology will assign the debt to a collection agency pursuant to RCW [19.16.500](#).¹ The Customer must pay all collection agency fees and interest, as authorized by law. Ecology may deny future applications to the VCP in either the Standard or Expedited VCP processes due to outstanding or late payments.

¹ <https://app.leg.wa.gov/rcw/default.aspx?cite=19.16.500>

Chapter 6: Project Termination

This chapter describes who may terminate the Expedited VCP agreement, under what circumstances the agreement may be terminated, and how the agreement may be terminated. When Ecology or the Customer terminates an Expedited VCP agreement, Ecology will deduct the appropriate close out fee from the prepayment. See the [Close Out Fee](#) section in Chapter 5 for the financial details on agreement termination.

Customer Withdrawal

Customers can terminate the Expedited VCP agreement at any time. To terminate the agreement, Customers must provide Ecology written notification by email or letter.

Customer Change Due to Property Transfer

The current Customer must notify Ecology in writing **at least 30 calendar days** before an expected transfer in ownership of the facility, even if the Customer will not change after the transfer. Failure to do so may result in project termination.

The current Customer may elect to transfer enrollment to the new owner of the property. If the Customer will change because of a transfer in ownership of the facility, the transferee must do the following within **10 calendar days** of the property transfer to remain in Expedited VCP process:

- Submit to Ecology:
 - An updated Expedited VCP agreement signed by the transferee.
 - An updated VCP application, or other form specified by Ecology, also signed by the transferee.
- Pay the initial prepayment within 30 calendar days of the date on the invoice provided by Ecology.

Ecology will not require the transferee to pay the nonrefundable application fee, provided they submit the Expedited VCP agreement and application within **10 calendar days** of the property transfer. If the transferee does not submit the Expedited VCP agreement and application within **10 calendar days** of the property transfer, Ecology may require the transferee to re-apply to the Expedited VCP process with the nonrefundable application fee, at its discretion.

The current Customer must submit a written request to terminate its Expedited VCP agreement before Ecology can accept the transferee into the Expedited VCP process. If Ecology receives

the Expedited VCP agreement and application from the transferee before receiving a written request to terminate, Ecology will work with both parties to determine the intent to transfer.

Property-specific NFA

When Ecology issues a Property-specific No Further Action (NFA) opinion, the Customer will need to clarify whether they intend to continue cleaning up the site by doing one of the following no later than the due date for next quarterly progress report:

- Terminate the Expedited VCP agreement by providing Ecology written notification (email or letter).
- Submit a work plan for additional cleanup work to address the remaining contamination at the site.

If the Customer does not take one of the previous actions, Ecology will terminate the Expedited VCP agreement after the next quarterly progress report due date.

Non-performance

Ecology will provide written notice of non-performance, with an opportunity to correct deficiencies, to any Customer who does not follow the expectations outlined in this Guidance. Potential reasons for a written notice of non-performance include:

- **Delinquent prepayments.** Prepayments not provided within the appropriate period (see [Chapter 5: Fees and Cost Recovery](#)).
- **Lack of cooperation by the Customer.** Lack of cooperation could include denying Ecology site access; not providing requested information; providing false or misleading information; not fostering an environment for professional dialogue and discussion; or not meeting other expectations as outlined in [Chapter 4: Expectations and Commitments](#).
- **Lack of cleanup progress.** A lack of cleanup progress could include any of the following:
 - Missing, late, or incomplete quarterly progress reports
 - Absent or incomplete performance of work on site
 - Insufficient communication on changes to the project schedule
 - Missing, late, or incomplete submission of substantive deliverables, work plans, reports, or accompanying schedules
- **Other reasons.** Other reasons identified in consultation with the Ecology Section Manager and Attorney General's Office.

The written notice of non-performance will document the non-performance of the Customer and describe the actions and timeframe necessary to correct the situation. If the Customer does not adequately correct the situation, Ecology may terminate the agreement. The Ecology Section Manager will make termination decisions. All decisions to terminate Expedited VCP agreements are final and non-negotiable. Ecology may restrict future eligibility for the Expedited or Standard VCP processes depending on the reason for termination.

Planned Ecology Supervision

Based on additional information about the site discovered during the project, Ecology may determine that the project is no longer eligible for the VCP and terminate the Expedited VCP agreement. See the Site-specific conditions listed in the Eligibility section in Chapter 2. In such cases, Ecology may decide to supervise further remedial actions at the site under an order or decree. Potentially liable persons may also initiate discussions for an order or decree (WAC [173-340-510](#)).

Immediate Cause for Termination

Ecology's ability to provide services under the Expedited VCP process is dependent on its ability to recover costs from the Customer. Accordingly, if a Customer demonstrates either an inability or an unwillingness to pay Ecology's costs, Ecology will immediately terminate the Expedited VCP agreement. Examples include:

- Customer files for bankruptcy
- Customer provides a check without sufficient funds (bounced check).

Close Out Fee

When an Expedited VCP agreement is terminated, Ecology will deduct the appropriate close out fee from the prepayment. See Close Out Fee in Chapter 5 for the financial details on agreement termination.

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Chapter 7: Monitoring Program Performance and Revenue

The Expedited VCP process began on July 1, 2020. Ecology will continue to monitor performance metrics and program revenue.

Performance

To monitor performance of the Expedited VCP process, Ecology will track:

- The number of requests for opinions
- How quickly Ecology responds to requests for opinions with a written opinion.

Ecology expects to respond to complete requests for opinions with a written opinion within 90 calendar days. Ecology will review performance related to this goal before deciding to open an application period and accept new Expedited VCP projects.

Revenue

MTCA requires that revenue from fees and cost recovery pay for all of Ecology's costs related to providing advice and assistance in the Expedited VCP process (RCW [70.105D.180\(3\)](#)). If the revenue does not cover all of these costs, Ecology may revise the fees and cost recovery rates or suspend offering the Expedited VCP process. Suspension of the Expedited VCP process will not affect the availability of the Standard VCP process.

Updates

During the first year of implementation, Ecology will continue engaging with stakeholders and seeking feedback. Within approximately the first year, Ecology also anticipates a) starting rulemaking and b) making adjustments to this guidance based on the experience learned during its implementation..

To receive updates, including when Ecology opens or closes application periods, please subscribe to the [Expedited VCP email list](#).

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Chapter 8: Affordable Housing Waiver

Ecology anticipates introducing an affordable housing waiver for both the Expedited and Standard VCP processes in late 2020. When deciding whether to provide a waiver, Ecology will consider the applicant's ability to pay and the potential public benefit of the project. Ecology may file a lien against the property, or use other means equally protective of the ongoing affordable housing use of the property, to ensure that the property is used for affordable housing. To receive updates and details about the affordable housing waiver, please subscribe to the [Expedited VCP email list](#).

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Appendix A: Resources for Voluntary Cleanup Program- Expedited Process

Primary Resources

Voluntary Cleanup Program

[Expedited VCP](#)¹ (webpage)

[Expedited VCP agreement](#)²

[Expedited VCP process email list](#)³ (subscriber page and archive)

[Standard Voluntary Cleanup Program \(VCP\)](#)⁴ (webpage)

[VCP application form](#)⁵

MTCA and Legislation

[Model Toxics Control Act \(MTCA\)](#)⁶ (webpage)

[Substitute House Bill 1290](#)⁷

Databases

[Environmental Information Management \(EIM\)](#)⁸

[EIM Help Center](#)⁹

Checklists

[Agency Determination Checklist](#)¹⁰

[Remedial Investigation Checklist](#)¹¹

¹ www.ecology.wa.gov/ExpeditedVCP

² <http://ecyapfaff/Biblio2/SummaryPages/ECY070633.html>

³ <http://listserv.ecology.wa.gov/scripts/wa-ECOLOG.Y.exe?SUBED1=EXPEDITED-VCP&A=1>

⁴ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

⁵ <https://fortress.wa.gov/ecy/publications/summarypages/ECY02074.html>

⁶ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act>

⁷ <https://app.leg.wa.gov/billsummary?BillNumber=1290&Chamber=House&Year=2019>

⁸ <https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data>

⁹ <https://apps.ecology.wa.gov/eim/help/>

¹⁰ <https://fortress.wa.gov/ecy/publications/SummaryPages/1709059.html>

¹¹ <https://fortress.wa.gov/ecy/publications/SummaryPages/1609006.html>

Additional Resources

Databases and lists

[Cleanup Levels and Risk Calculation](#)¹ (CLARC resources)

[Hazardous Sites List](#)² (special edition of the Site Register)

Toxics Cleanup Program policies & procedures

[TCP policies and guidance](#)³ (webpage)

[Policy 840: Data Submittal Requirements](#)⁴

[Procedure 440A: Establishing Environmental Covenants under MTCA](#)⁵

Toxics Cleanup Program guidance

[Property-specific NFAs](#)⁶

[Remediation of petroleum contaminated sites](#)⁷

[Property cleanups under the VCP](#)⁸

[Model remedies](#)⁹ (webpage)

[Vapor intrusion guidance](#)¹⁰ (webpage)

¹ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Contamination-clean-up-tools/CLARC>

² <https://fortress.wa.gov/ecy/publications/UIPages/PublicationList.aspx?IndexTypeName=Program&NameValue=Toxics+Cleanup&DocumentTypeName=Newsletter>

³ <https://ecology.wa.gov/Regulations-Permits/Plans-policies/Toxics-cleanup-policies>

⁴ <https://fortress.wa.gov/ecy/publications/SummaryPages/1609050.html>

⁵ <https://fortress.wa.gov/ecy/publications/SummaryPages/1509054.html>

⁶ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/MTCA-model-remedies/No-further-actions>

⁷ <https://fortress.wa.gov/ecy/publications/SummaryPages/1009057.html>

⁸ <https://fortress.wa.gov/ecy/publications/SummaryPages/0809044.html>

⁹ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/MTCA-model-remedies>

¹⁰ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Vapor-intrusion-overview>

Checklists and forms

[Feasibility Study Checklist](#)¹¹

[VCP Request for Opinion](#)¹²

[Terrestrial Ecological Evaluation](#)¹³

Pollution Liability Insurance Agency (PLIA)

[Heating Oil Technical Assistance Program](#)¹⁴ (HOTAP)

[Petroleum Technical Assistance Program](#)¹⁵ (PTAP)

Laws and rules (Washington State Legislature’s website)

[Chapter 70.105D RCW](#)¹⁶ (MTCA statute) and its implementing regulations:

[Chapter 173-340 WAC](#)¹⁷ (MTCA Cleanup Rule) and

[Chapter 173-204 WAC](#)¹⁸ (SMS Rule)

¹¹ <https://fortress.wa.gov/ecy/publications/SummaryPages/1609007.html>

¹² <https://fortress.wa.gov/ecy/publications/SummaryPages/ecy070219.html>

¹³ <https://fortress.wa.gov/ecy/publications/SummaryPages/ecy090300.html>

¹⁴ <https://plia.wa.gov/heating-oil-technical-assistance-program/>

¹⁵ <https://plia.wa.gov/ptap/>

¹⁶ <https://apps.leg.wa.gov/RCW/default.aspx?cite=70.105D>

¹⁷ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340>

¹⁸ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>

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